

APPEAL NO. 010366

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 17, 2001, the hearing officer determined the sole disputed issue by concluding that the compensable injury sustained by the appellant (claimant) on _____, does not extend to include an L5-S1 subligamentous herniated nucleus pulposus, bilateral spondylosis of the L5 disc, spondylolisthesis, and lumbosacral facet joint dysfunction with radiculopathy and spina bifida. The claimant's appeal challenges the sufficiency of the evidence to support this conclusion as well as a finding that spina bifida occulta causes spondylolisthesis and lumbosacral facet joint dysfunction. The respondent (carrier) urges in response that the evidence is sufficient to warrant our affirmance.

DECISION

Affirmed.

The hearing officer did not err in making the challenged determination. The claimant testified that on _____, while employed as a fire watcher, she felt pain in her back after twisting while holding on to a fire hose and picking up an industrial-sized fire extinguisher. Dr. C, a chiropractor and the claimant's treating doctor, testified that the claimant's spina bifida is congenital and was not aggravated by the claimant's activities on _____; that the claimant's spondylolisthesis, also congenital, probably resulted from the spina bifida and was aggravated on _____; that he understands that testing shows that the claimant has a protruding disc at L5-S1 which did not show up on an MRI of June 22, 1998, but which has been seen on a later MRI; and that although the claimant does not have true radiculopathy in her lower extremities, she does have low back pain and bilateral leg pain caused by the L5-S1 disc.

The claimant argued that she was trying to establish that her lumbar spine restricted range of motion and that pain resulted from the _____ event and not from her congenital lumbar spine condition. She contended that she proved that the _____ event "either aggravated the spondylolisthesis or caused some sort of leaking of the disc at the L4-5 level."

The voluminous medical evidence in this case is in substantial conflict concerning not only the nature and extent of the claimant's lumbar spine problems but also the relationship of those problems to her claimed injury of _____. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do

not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge